UNITED
NATIONS

AT

Administrative Tribunal

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AT/DEC/487
24 October 1990

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 487

Case No. 495: LIMA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Ahmed Osman, Vice-President, presiding; Mr. Arnold Kean; Mr. Ioan Voicu;

Whereas, at the request of Carlos Pereira Lima, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 9 April, 31 July, 31 October, 30 November and 30 December 1988, and 16 January 1989, the time-limit for the filing of an application;

Whereas, on 16 January 1989, the Applicant filed an application, containing pleas which read in part as follows:

"II. PLEAS

7. The Applicant respectfully requests the Administrative Tribunal:

...

(16) To order the Secretary-General:

(a) To rescind his decision of 23 September 1987 to maintain the contested decisions of 18 December 1984 and 18 January 1984 taken by OGS [Office of General Services] and OPS [Office of Personnel Services], respectively, not to extend the Applicant's fixed-term appointment first beyond 21 January 1984 and finally beyond 21 February 1985.

(b) To reinstate the Applicant in the service of the Organization retroactive from 22 February 1985.

(c) to pay the Applicant his salary and appropriate allowances retroactive from 22 February 1985 and also to pay appropriate contributions on his behalf and on behalf of the Organization, to the United Nations Joint Staff Pension Fund retroactive from 22 February 1985.

(17) To award the Applicant appropriate and adequate compensation for the material and moral injuries suffered by him during almost 4 years as a direct consequence of the arbitrary, discriminatory and prejudicial decision taken by OPS on 18 January 1985 not to extend his fixed-term appointment beyond 21 February 1985, as well as the Respondent's decision of 23 September 1987 not to reinstate the Applicant in the service of the Organization retroactive from 22 February 1985, ...

(18) To award the Applicant appropriate and adequate compensation for the unreasonable delays in the JAB [Joint Appeals Board] procedures for over two years from 7 June 1985 to 23 September 1987, constituting a 'denial of justice' in his case, which, in turn, caused the Applicant to suffer considerable material and immeasurable moral injuries.

(19) To hold oral proceedings on the case to hear the Applicant and the witnesses concerned."

Whereas the Respondent filed his answer on 27 January 1989;

Whereas the Applicant filed written observations on 1 May 1989;

Whereas, on 27 March 1990, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas, on 29 March 1990, the Applicant submitted an additional document;

Whereas, on 21 May 1990, the Applicant submitted an additional document;

Whereas, on 31 May 1990, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn its consideration of the case until its next session to be held in New York in October 1990;

READEX FICHE

Whereas the facts in the case are as follows:

Carlos Pereira Lima entered the service of the United Nations on 22 August 1982. He was initially offered a two year fixed-term appointment at the P-3, Step IV level, as a Systems Officer, in the Purchase, Transportation and Commercial Services, Field Missions Procurement Section of the Office of General Services (OGS). In a memorandum dated 24 July 1984, the Acting Executive Officer, OGS, recommended to the competent Personnel Officer at the Office of Personnel Services (OPS), that the Applicant's appointment be extended for a further fixed-term period of one year. He stated that an up-to-date performance evaluation report would be forwarded as soon as possible.

The Applicant's performance was evaluated in a performance evaluation report dated 24 August 1984, in which the Applicant's First Reporting Officer gave the Applicant one "A" (Excellent) rating, three "B" (Very Good) ratings, six "C" (Good) ratings and four "D" (Fair) ratings. Upon receipt of the report, on 5 September 1984, the Personnel Officer questioned the Executive Officer's recommendation, stating that "... the assessment of [the Applicant's] work as it stands ... certainly casts doubts as to his ability to meet the requirements of the job entrusted to him ...". She also noted that it was her "understanding that neither the Director nor the Deputy of the Division to which the staff member belong[ed] were favourable to an extension". In a reply dated 24 September 1984, the Executive Officer, OGS, explained that his initial recommendation was based on his "impression that despite the shortcomings that had been orally related to [the Applicant] at the time by his superiors, [he] had the potential to at least complete his current assignment" and that "his supervisors [had] subsequently agreed to a one year extension". He stated he was "confident that the Office of Personnel Services [would] be in a position to consider the request with due regard to all circumstances".

On 24 September 1984, the Applicant instituted a rebuttal procedure to his performance evaluation report, pursuant to Administrative Instruction ST/AI/240/Rev.1. The Applicant's appointment was then extended on a month-to-month basis, pending completion of the rebuttal of his report. On 18 December 1984, the Executive Officer, OGS, informed the Applicant that his appointment would not be extended beyond 21 January 1985. The Rebuttal Panel that would evaluate the Applicant's rebuttal was finally constituted on 21 December 1984.

On 7 January 1985, the Applicant filed a complaint with the Panel on Discrimination and other Grievances (Panel on Discrimination). In a memorandum dated 15 January 1985, the Co-ordinator ad interim of the Panel on Discrimination recommended to the Assistant Secretary-General, OPS, that the Applicant's appointment be extended for two months beyond 21 January 1985, to enable the Panel to complete its investigation and to allow completion of the rebuttal proceedings. In a reply dated 18 January 1985, the Director, Division of Personnel Administration, OPS, agreed to a one month extension of the Applicant's appointment, through 22 February 1985.

On 25 January 1985, the Rebuttal Panel submitted its report to the Officer-in-Charge, OGS. It found that the report did "not adequately reflect [the Applicant's] actual performance in the period under review" and seemed to the Panel "unduly negative". In addition, "the responsibility of [the Applicant's] failure to live up to the expectations of his supervisors and his Department should not be borne by [the Applicant] alone, but should be shared equally by both sides". Consequently, the Panel recommended the striking of all verbal comments by which the First Reporting Officer had explained his ratings, on the ground that "they neither explain[ed] nor illustrate[d] the ratings in any meaningful way", and the upgrading of 9 of the 14 ratings by one step each, resulting in two As, eight Bs, three Cs and one D. The Panel did not recommend an upgrading of the overall rating (Fair) of the Applicant's performance.

The Assistant Secretary-General, OGS, as required by Administrative Instruction ST/AI/240/Rev.1, recorded her appraisal of the Rebuttal Panel's report on 20 February 1985. In her reasoned note, she indicated that although she doubted that the Panel members were in a better position than the Applicant's supervisors to justify the slightly higher ratings they had proposed, she was prepared to accept them. She noted, however, that the Panel had seen no grounds to change the one remaining D for "Working Relations", nor the Second Reporting Officer's overall rating of "Fair" and made no changes in these ratings herself.

The Applicant was separated from the service of the United Nations on 21 February 1985. In a report dated 21 February 1985, the Co-ordinator ad interim of the Panel on Discrimination communicated to the Assistant Secretary-General, OPS, the Panel's conclusion that the Applicant had not

been subjected to discriminatory treatment. The Panel found that the Applicant's supervisors should have provided the Applicant with adequate guidance and recommended that, in view of the Applicant's conceded professional skills, he should be considered for some other assignment so that the Organization's investment in him should not be wasted. The Panel also indicated that it had ascertained that the Rebuttal Panel's failure to propose an upgrading of the overall rating had been due to an oversight, and recommended that what they considered as the resulting discrepancy, be corrected. No action was taken on the report of the Panel on Discrimination.

On 17 February 1985, the Applicant requested the Secretary-General to review the decision not to extend his appointment beyond 21 February 1985. Having received no reply, he lodged an appeal with the Joint Appeals Board (JAB) on 7 June 1985. The Board adopted its report on 19 August 1987. Its conclusions and recommendation read as follows:

> "Conclusions and Recommendation
>
> 33. The Panel concludes that, through verbal assurances which were subsequently confirmed in written recommendations for the renewal of his fixed-term appointment, the appellant had reasonable grounds to expect that his employment with the Organization would continue for another year.
>
> 34. The Panel also concludes that the Administration, in arriving at its decision not to renew the appellant's contract beyond 21 February 1985, was not influenced by prejudice or improper motivation.
>
> 35. The Panel recommends that the appellant be paid an indemnity equal to six weeks' net base salary, considering the fact that the appellant, through the month-to-month renewals of his contract, served six months out of the twelve months that could reasonably have been anticipated and relied on".

On 23 September 1987, the Assistant Secretary-General for Human Resources Management* informed the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided:

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* Succesor of OPS.

"(a) to maintain the contested decision, and

(b) to pay [him] compensation in an amount equivalent to six weeks of [his] net base salary at the time of [his] separation from service."

On 16 January 1989, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant had a legal expectancy of renewal of his fixed-term appointment on a long term basis.

2. The Applicant had a right to consideration for posts elsewhere in the United Nations Secretariat.

3. The procedural irregularities in the Rebuttal Panel and the Panel on Discrimination caused the Applicant a miscarriage of justice.

4. The unreasonable delays in the JAB procedures caused the Applicant a denial of justice.

Whereas the Respondent's principal contentions are:

1. The Applicant had, at most, a limited expectation of an extension of his appointment.

2. The Applicant was not entitled to a performance evaluation report better than the revised one he received.

3. The Applicant was not the victim of discrimination or prejudice.

4. The Applicant had no presumptive right to consideration for posts elsewhere in the United Nations Secretariat.

The Tribunal, having deliberated on 4 and 5 May 1990 in Geneva and from 12 October to 24 October 1990 in New York, now pronounces the following judgement:

I. The statement of facts and legal arguments submitted on behalf of the Applicant extends to 72 pages, with 52 pages of written observations on the answer of the Respondent. The material presented is sufficient to render an oral hearing unnecessary. Much of the statement and observations is repetitive and abusive.

II. There are a number of points at issue:

(i) Did the Applicant have a legal expectancy of further employment by the Organization after expiry of his original two year fixed-term contract?

(ii) Ought an effort to be made to find a post for the Applicant elsewhere in the United Nations system?

(iii) Was consideration of the extension of his contract flawed by arbitrariness, prejudice, collusion or similar defect on the part of those concerned?

(iv) Did the Administration, in dealing with this case, cause delays for which the Applicant should be compensated?

(v) Ought the Applicant to be awarded a sum in respect of his legal costs?

III. Having examined the evidence, the Tribunal shares the view of the Joint Appeals Board (JAB) that the Applicant, because of verbal assurances from his superior, confirmed by written recommendations, had reasonable grounds to expect that his fixed-term appointment would be extended beyond its original expiry date of 21 August 1984, by at least one year, of which period he then served six months, on month-to-month extensions. The JAB recommended payment to the Applicant of six weeks' net base salary as indemnity for the unserved period of six months. The Tribunal's view is that the compensation to be paid to the Applicant, in the circumstances of this case, should exceed the figure of one week's salary for each month unserved, and consequently the Tribunal awards him a sum equal to six months' net base salary, less the six weeks' salary he has already received, pursuant to the JAB's recommendation. The Tribunal is aware that the JAB took into account earlier awards by the Tribunal, (Cf. Judgement No. 132, Dale (1969) and No. 142, Bhattacharyya (1971)), but it considers that the scale of one week's salary for each unserved month is not rigidly binding and that all the circumstances of the case should be taken into account.

IV. The Applicant contends, principally on the basis of Judgement No. 4, Howrani (1951), that the Respondent ought to have made an effort to find him

a post elsewhere in the United Nations system as the Panel on Discrimination had suggested. The Tribunal accepts the Respondent's reply that at most, the Howrani case is a precedent applicable only to staff members on "temporary-indefinite" contracts and not to those on fixed-term contracts.

V. In considering the possible extension of his appointment, the Administration took into account a performance evaluation report in respect of the Applicant which was prepared by two reporting officers. That report was not favourable to the Applicant, giving him an overall rating of "Fair". The Applicant has asserted that the two reporting officers were prejudiced against him and acted arbitrarily and in collusion against him in "fabricating" the report, an allegation he repeats many times.

VI. On 24 September 1984, the Applicant filed a rebuttal of the report, which he describes in his application as fraudulent, arbitrary, discriminatory and prejudicial. The Rebuttal Panel upgraded 9 out of the 14 ratings given by the First Reporting Officer, but omitted to recommend a corresponding upgrading of the overall rating of "Fair" given by the Second Reporting Officer. The Applicant's comments on this are inconsistent: on the one hand, he repeatedly asserts that the omission was deliberate and collusive on the part of the Rebuttal Panel, on the other, he asserts that it was an inadvertent failure on their part.

VII. In any event, the report of the Rebuttal Panel was only a recommendation, requiring appraisal by the Head of the Applicant's Department (the Assistant Secretary-General, OGS,) who accepted the upgrading of nine ratings recommended by the Panel, but did not make any change in any other ratings or in the overall rating of "Fair". The Applicant asserts that the Assistant Secretary-General "was strongly prejudiced and hostile toward the entire rebuttal procedure [and] devised a 'scheme' to terminate the Applicant's services 'by hook or by crook'". The arguments advanced by the Assistant Secretary-General are described by the Applicant as "completely irrational, illogical and unjustifiable and ... clearly tainted [emphasis is the Applicant's] by her hostility toward the Applicant, which she had manifested on several occasions, ... and which was

brought about by false and unilateral representations by the Applicant's Second Reporting Officer." The Applicant has adduced no evidence to support these allegations.

VIII. The Applicant also argues that an upgrading of the rating of 9 out of 14 ratings necessarily requires an upgrading of the overall rating which, he contends, must depend on the average of the itemized ratings. In general, the Tribunal considers that the overall rating is a matter for appraisal depending on the circumstances of the case. In this case, the upgrading of so many individual ratings would appear to call for an upgrading of the overall rating.

IX. On 7 January 1985, before the Rebuttal Panel had submitted its report, (which was on 25 January 1985), the Applicant filed a complaint with the Panel on Discrimination. This included allegations of "making false promises and wilfully misleading an employee to his detriment", also of harassment by his superior. The Panel on Discrimination reported to the Assistant Secretary-General, OPS, on 21 February 1985, that the Applicant had not been subjected to discriminatory treatment. However, it criticized his conditions of work and recommended that, in view of his conceded professional skills, the Applicant should be considered for some other assignment with the Organization, so that its investment in him would not be wasted. No action was taken on the Panel on Discrimination's report.

X. On 17 February 1985, the Applicant requested the Secretary-General to review the decision not to extend his appointment beyond 21 February 1985. Not having received a reply, he appealed to the JAB, which concluded in its report that the decision not to renew the Applicant's contract beyond 21 February 1985, had not been influenced by prejudice or improper motivation. The Panel on Discrimination and the Rebuttal Panel also found that there had been no prejudice or improper motivation. Having noted that the only alleged evidence of prejudice or improper motivation consists of unsupported unilateral statements by, or on behalf of, the Applicant, the Tribunal has reached the same conclusion as the three panels which have previously considered the question.

XI. The Applicant claims compensation for the injury he has allegedly suffered through delay of the Administration in dealing with his case. The Tribunal recognises that such delay can cause injury and it has previously awarded compensation for delay. (Cf. Judgement No. 327, Ridler (1984) and Judgement No. 414, Apete (1988)). In Judgement No. 351, Herrera (1985), para. X, however, the Tribunal held that it would only award compensation for delay if the claim was "firmly based on proof of fault on the part of the Organization".

XII. In the present case, the Applicant filed a rebuttal of his report on 24 September 1984, and the Rebuttal Panel was not established until 21 December 1984, a delay of almost three months. However, an examination of the file shows that the delay was caused by the Administration's efforts to find a third member of the Panel who was acceptable to the Applicant. This does not, in the Tribunal's view, amount to fault on the part of the Organization.

XIII. The Rebuttal Panel reported on 25 January 1985. The Head of the Department made her appraisal of the report only on 20 February 1985, which was one day before the Applicant's contract, as extended month-by-month, was due to expire. This was certainly leaving the appraisal until the eleventh hour, but there is no evidence to show that it was due to a deep-dyed plot on the part of a prejudiced Assistant Secretary-General, as asserted by the Applicant, rather than a degree of administrative sluggishness. The Tribunal recognizes that such an eleventh-hour appraisal must have been distressing for the Applicant and intends to take it into account in assessing compensation for delay.

XIV. The second head of delay is in connection with the consideration of the case by the JAB. The Applicant's appeal to the JAB was dated 7 June 1985, but the Respondent did not file his answer until 7 January 1987, a delay of 19 months. The Respondent has not given any explanation of the delay, which must, in the absence of an explanation, be taken to have been caused by the fault of the Administration (res ipsa loquitur) and therefore

to entitle the Applicant to compensation. (Cf. Judgement No. 327, Ridler (1984) and Judgement No. 414, Apete (1988)).

XV. In the present case, the Tribunal considers that US$800 will be adequate compensation for the delay before the JAB, and also for any delay in the appraisal of the Rebuttal Panel's report.

XVI. In his written observations on the Respondent's answer, the Applicant has introduced a new request to the Tribunal: that in addition to any indemnity due to him, he should be awarded US$3,000 to cover counsel's fees and expenses. The Applicant has, in a personal letter to the former President of the Tribunal, addressed the same request to the Tribunal, contesting the Respondent's argument that the request for US$3,000 by way of costs should be rejected.

XVII. It is not in general permissible for new requests to be introduced by way of written observations without amending the Applicant's pleas, nor by means of a personal letter to the President of the Tribunal. (Cf. Judgements No. 446: San Jose (1989) and No. 449, Janitschek (1989)).

XVIII. As regards costs, the Tribunal has declared in its statement of policy contained in document A/CN.5/R.2 dated 18 December 1950, that, in view of the simplicity of its proceedings, the Tribunal will not, as a general rule, grant costs to Applicants whose claims have been sustained by the Tribunal. Nor does the Tribunal order costs against the Applicant in a case where he fails. In exceptional cases, the Tribunal may, however, grant costs if they are demonstrated to have been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the Tribunal. (Cf. Judgements No. 237, Powell (1979), No. 465, Safavi (1989) and No. 484 Kleckner (1990)).

In addition, the Tribunal would not award costs or expenses to an Applicant, even though his application has been wholly or partially successful, unless the presentation of his case has been free of misconduct.

XIX. In this case, the Tribunal has alluded to the abusive and repetitive allegations which have been made on the Applicant's behalf against a number of officers of the Organization. The Tribunal notes that these allegations have been unsupported by evidence and have unduly complicated the consideration of the case. The Tribunal accordingly makes no award in respect of costs or expenses.

XX. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant:

(a) Six months' net base salary at the rate in effect at the time of the Applicant's separation from service, less the six weeks' net base salary awarded by the Secretary General on the JAB's recommendation, as compensation for non-fulfilment of the Applicant's expectancy of further employment, and

(b) US$800 as compensation for delay.

XXI. All other pleas are rejected.

(Signatures)

Ahmed OSMAN
Vice-President, presiding

Arnold KEAN
Member

Ioan VOICU
Member

New York, 24 October 1990

R. Maria VICIEN-MILBURN
Executive Secretary

UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/488
25 October 1990

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 488

Case No. 515: MOSER

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding; Mr. Samar Sen; Mr. Arnold Kean;

Whereas, on 16 June 1989, Hans Jurgen Moser, a former staff member of the United Nations Industrial Development Organization, hereinafter referred to as UNIDO, filed an application with the Tribunal in which he requested, inter alia, a revision of Judgement No. 388 rendered in his case on 4 June 1987;

Whereas the application contains the following pleas:

"II. PLEAS

6. The Applicant respectfully requests the Administrative Tribunal:

(1) To declare his application receivable under Article 12 of its Statute (the reference is to the wording '... errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal ...').

(2) To revise the Administrative Tribunal's Judgement No. 388: Moser (Case No. 273) in the light of the provisions laid down in Article 9 of the Statute of the Tribunal, i.e., to rescind the decisions contested by the Applicant regarding the classification level of his former post (...), namely:

(a) the decision of 21 December 1971 to classify his post in the General Service Category; and

(b) the decision of 27 July 1977 not to take steps to reclassify his post;

which rescissions were omitted in Judgement No. 388.

(3) To order that the Applicant's post officially be reclassified to the level of P-2 by the Administration of the United Nations Industrial Development Organization (UNIDO), with retroactive effect from 1 March 1972, the date when the Applicant joined UNIDO, through 28 November 1978, the date of the Applicant's separation from service, and that his grading level be brought into harmony with his new classification level with effect of[sic] the dates mentioned above.

(4) To order that the difference in salary between the levels G-7 (the Applicant's actual grading during the entire period of his service) and P-2 (the appropriate level for the Applicant's post, as spelled out in the Tribunal's Judgement No. 388) be paid to the Applicant. Further, to order that such calculation of the difference in salary should take into consideration all benefits and allowances applicable to the Viennese duty station, especially the post adjustment applicable for Vienna. According to the Applicant's estimate this difference totals to approximately US$65,000 (on the basis of the exchange rates currently in effect) as the monetarial damage sustained by him.

(5) To order that a new 'Certification of Service' - letter be issued by UNIDO Administration, which indicates the Applicant's status as Professional during the entire period of his service.

(6) To award the Applicant a sum of US$500 as legal costs."

Whereas the Respondent filed his answer on 26 October 1989;

Whereas the Applicant filed written observations on 20 January 1990;

Whereas the facts in the case were set out in Judgements No. 304, No. 325 and No. 388;

Whereas the Applicant's principal contentions are:

1. The Tribunal did not explain its reasons for fixing the amount of compensation awarded in Judgement No. 388, did not order the contested administrative decision to be rescinded, and did not order the reclassification of the Applicant's post.

2. Although the Applicant requested the Tribunal to rescind the decisions to classify his post in the General Service Category and then, not to reclassify his post, the Tribunal did not, under article 9 of its Statute, "order the rescinding of the decision contested". This constitutes an "omission" under article 12 of the Statute of the Tribunal, warranting revision of Judgement No. 388.

3. The Applicant is entitled to a new Certificate of Service, rewritten to show the professional nature of his former post and his grading on the level of the post.

Whereas the Respondent's principal contentions are:

1. The application for revision, made more than two years after the Tribunal's Judgement No. 388, delivered on 4 June 1987, is time-barred under article 12 of the Tribunal's Statute.

2. The Applicant's claims concerning the Tribunal's "accidental omission" to rescind the decision classifying his former post at the General Service level and his claim for additional damages assessed at US$65,000 are not matters falling within the final sentence of article 12 of the Tribunal's Statute.

3. The Applicant's request for a revision of his Certificate of Service is not a matter falling under article 12 of the Tribunal's Statute.

The Tribunal, having deliberated from 16 October to 25 October 1990, now pronounces the following judgement:

I. The Applicant asserts that his claim for revision of Judgement No. 388 is receivable under article 12 of the Tribunal's Statute on the ground that it results from an "error arising therein from any accidental slip or omission". The omission to which he refers is the omission, in Judgement No. 388, to order the rescission of the administrative decisions

of 21 December 1971 (to classify his post in the General Service Category) and of 27 July 1977 (not to reclassify his post).

II. Article 12 of the Statute provides, inter alia, "Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal ...". In the Tribunal's view, the adjective "accidental", governs both "slip" and "omission", so that the power conferred by article 12 does not extend to the correction of errors in judgements unless resulting from an accidental slip or accidental omission. It does not empower, or confer a right to, a review of decisions deliberately made by the Tribunal.

III. In the present case, there is not a shred of evidence that the Tribunal's judgement resulted from an accidental slip or an accidental omission in not ordering the rescission of the administrative decisions of 21 December 1971 and of 27 July 1977. Indeed, paragraph XV of Judgement No. 388, in awarding US$10,000 in compensation, stated specifically that the Tribunal was taking into consideration "all the circumstances of the case". The Judgement then stated: "All other pleas are rejected". Accordingly, this application is, in reality, merely an impermissible attempt to reopen issues already decided.

IV. For the foregoing reasons, the application is not receivable.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Samar SEN
Member

Arnold KEAN
Member

New York, 25 October 1990

R. Maria VICIEN-MILBURN
Executive Secretary